CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 18, 2006

S. 2557
Oil and Gas Industry Antitrust Act of 2006

As ordered reported by the Senate Committee on the Judiciary on April 27, 2006

SUMMARY

S. 2557 would prohibit individual firms from limiting supplies of petroleum and natural gas products with the intent of increasing prices or creating shortages in the market. The bill also would seek to prohibit foreign states from working collectively to limit the production, set the price, or otherwise restrain the trading of petroleum and natural gas when such actions affect U.S. markets. Under the bill, foreign states that restrain trade in petroleum and natural gas would not be immune—under the doctrine of sovereign immunity—from the judgments of U.S. courts.

S. 2557 would direct the Department of Justice (DOJ) and the Federal Trade Commission (FTC) to enforce this legislation by filing antitrust actions in federal courts and pursuing the enforcement of the new laws regarding market manipulation. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost less than $500,000 in 2006 and about $10 million over the 2007-2011 period. Enacting the bill could increase both direct spending or revenues, but CBO cannot estimate the timing or magnitude of any such effects.

S. 2557 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA); any costs to state, local, or tribal governments would result from voluntary participation by state attorneys general in the joint federal and state task force created by the bill. S. 2557 would impose a private-sector mandate, as defined in UMRA, on certain oil and natural gas suppliers by changing antitrust standards for both industries. Because of uncertainty about how the new standards would affect current business practices, CBO cannot estimate the costs of complying with the mandate or whether the mandate cost would exceed the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 2557 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2006	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	*	2	2	2	2	2
Estimated Outlays	*	2	2	2	2	2

NOTE: * = Less than $500,000.

BASIS OF ESTIMATE

CBO estimates that implementing the bill would cost less than $500,000 in 2006 and about $10 million over the 2007-2011 period. Enacting the bill could increase both revenues and direct spending, but CBO cannot estimate those potential effects.

Spending Subject to Appropriation

Based on information from the FTC and DOJ, CBO estimates that implementing the bill would cost each agency less than $250,000 in 2006 and about $5 million over the 2007-2011 period for the FTC and DOJ to enforce the bill's provisions regarding price manipulation in the energy market, to establish a joint federal-state task force to monitor information exchanges among energy firms, and to conduct a joint study regarding pricing in the energy market. For this estimate, CBO assumes that the bill will be enacted in 2006 and that the necessary amounts will be appropriated for each year.

Section 6 of S. 2557 would seek to prohibit foreign states from working collectively to limit the production, set the price, or otherwise restrain the trading of petroleum and natural gas when such actions affect U.S. markets. S. 2557 would direct the DOJ and the FTC to enforce this legislation by filing antitrust actions in federal courts. CBO cannot project the cost of implementing section 6 because we have no basis for assessing the likelihood, or frequency, of actions against foreign states under the bill. Based on information from the FTC and DOJ on the costs of recent large-scale investigations of alleged antitrust violations, CBO estimates that similar investigations under S. 2557 could cost up to $4 million a year, subject to the availability of appropriated funds.

Direct Spending and Revenues

Enacting section 6 could result in the collection of additional criminal or civil penalties from foreign governments for violations of the new provisions related to antitrust law. Collections of criminal fines are recorded in the budget as revenues, which are deposited in the Crime Victims Fund and spent in subsequent years. Thus, there would be no net budget effect (over time) for such criminal fines. Civil fines also are recorded as revenues. CBO cannot estimate the impact of S. 2557 on revenues and subsequent direct spending because we cannot determine whether DOJ and the FTC would file suit against alleged violators, whether the agencies would win such legal action, or the amount of any penalties that might be collected by federal agencies.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 2557 contains no intergovernmental mandates as defined in UMRA; any costs to state, local, or tribal governments would result from voluntary participation by state attorneys general in the joint federal and state task force created by the bill.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 2557 would impose a private-sector mandate, as defined in UMRA, on certain oil and natural gas suppliers. The bill would amend an antitrust law, the Clayton Act, to prohibit any supplier from withholding, exporting, or diverting existing supplies of natural gas, petroleum, gasoline, or other fuel derived from petroleum with the primary intention of increasing prices or creating a shortage in a geographic market. The Clayton Act currently prohibits certain acts or practices tending to substantially lessen competition and create a monopoly. The provisions in this bill would establish a new antitrust standard for oil and natural gas suppliers by requiring proof that a supplier intended to raise prices or create a shortage by its actions. This new standard would impose an enforceable duty on oil and gas suppliers by prohibiting them from reducing their supplies to increase prices or create shortages within a geographic market.

According to industry and government sources, the mandate could prohibit suppliers from pursuing certain valuable business opportunities that are legal under current law. It is not clear to what extent suppliers would forgo business opportunities under the bill or what the value of those lost opportunities would be. Thus, CBO cannot estimate the cost of the mandate or whether the cost would exceed the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

PREVIOUS CBO ESTIMATE

On April 19, 2005, CBO transmitted a cost estimate for S. 555, the No Oil Producing and Exporting Cartels Act of 2005, as reported by the Senate Committee on the Judiciary on April 14, 2005. Section 6 of S. 2557 is identical to S. 555, as are our estimates of the federal costs of those provisions. CBO's estimate of the federal costs for S. 2557 reflects the additional provisions contained in the bill regarding pricing of energy products by individual firms.

Although there are additional provisions in S. 2557, neither bill contains an intergovernmental mandate. CBO determined that S. 555 contained no private-sector mandates.

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